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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,144	02/27/2004	Jeffrey A. Tilton	25353A	9228
22889	7590	02/09/2006	EXAMINER	
OWENS CORNING 2790 COLUMBUS ROAD GRANVILLE, OH 43023			PIZIALI, ANDREW T	
			ART UNIT	PAPER NUMBER

1771

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/789,144

Applicant(s)

TILTON ET AL.

Examiner

Andrew T. Piziali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-37 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,14 and 16-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8-13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/3/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

1. The amendment filed on 12/5/2005 has been entered. The examiner has withdrawn the rejections of claim 2 based on the cancellation of claim 2. The examiner has withdrawn the USPN 4,474,846 to Doerer et al. rejections in view of the amendment to claim 1. The examiner withdraws the objection to the specification based on the amendments to the specification.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 5, 9-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,660,908 to Kelman et al. (hereinafter referred to as Kelman) in view of USPN 6,497,950 to Haile.

Regarding claims 1, 3, 5, 9-13 and 15, Kelman discloses a liner/insulator comprising a base layer of fibrous material and a plurality of ribs of fibrous material thermally bonded to the base layer (see entire document including column 1, lines 41-49, column 2, lines 38-47, and column 3, lines 48-57).

Kelman discloses the use of fibers made of PET (column 2, lines 10-22), but Kelman does not specifically mention bicomponent fibers. Haile discloses that PET fibers are not suitable for headliner applications because of the high temperatures associated with closed cars parked in hot climates (column 1, line 65 through column 2, line 8). Haile also discloses that it is

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known in the headliner art to use continuous and/or staple bicomponent fibers, with or without glass fibers, and discloses that polyester bicomponent fibers provide nonwoven fabrics having good integrity and bond strength while eliminating the problems associated with PET fibers (column 1, line 45 through column 2, line 8, column 12, lines 10-20, and column 13, line 32-57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fibers from any suitable fiber material, such as continuous and/or staple thermoplastic bicomponent fibers, as taught by Haile, because it has been held to be within the general skill of a worker in the art to select known materials on the basis of its suitability and because bicomponent fibers provide nonwoven fabrics having good integrity and bond strength.

Regarding claim 3, Kelman discloses that the fibrous material may be PET (column 2, lines 10-22) while Haile discloses the use of polyester fibers (column 2, lines 26-39).

Regarding claim 5, Kelman discloses that the ribs may extend parallel to one another (Figure 3).

Regarding claims 9-11, Kelman does not specifically mention the wet compression percentage, dry compression percentage, or dry wet recovery percentage, but considering that the liner/insulator taught by the applied prior art is identical to the claimed liner/insulator in terms of structure and materials, it appears that the liner/insulator taught by the applied prior art inherently possesses the claimed properties.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on

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inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claim 12, Kelman does not specifically mention using the liner/insulator as an automotive undercarpet, but since the claim fails to further structurally define the liner/insulator, it appears that the liner/insulator taught by Kelman can be considered an automotive undercarpet.

Regarding claim 13, Kelman does not specifically mention making the liner/insulator from scrap fibrous material, as opposed to an "in line" method, but Kelman does disclose that the liner/insulator is made of a fibrous material (column 2, lines 10-22). It is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article.

Regarding claim 15, Kelman discloses that the liner/insulator may be a nonlaminated (Figure 3).

4. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,660,908 to Kelman in view of USPN 6,497,950 to Haile as applied to claims 1, 3, 5, 9-13 and 15 above, and further in view of USPN 5,892,187 to Patrick.

Kelman is silent with regards to the distance between ribs and the width of the ribs, therefore, it would have been necessary and thus obvious to look to the prior art for conventional distances between ribs and rib widths. Patrick provides this conventional teaching showing that it is known in the headliner art to vary the distance between ribs, and the width of the ribs, based on the desired sound or noise to be attenuated (see entire document including column 4, lines 52-

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67 and column 5, lines 44-57). Patrick specifically discloses that the width of the ribs may be about 22 mm or less (0.87 inches or less) and illustrates a distance between the ribs about equal to the specifically mentioned rib width (column 5, lines 44-57 and Figures 1-3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ribs spaced apart at least about 0.25 inches and with a width of between about 0.5 to about 3.0 inches, as taught by Patrick, motivated by the expectation of successfully practicing the invention of Kelman and based on the desired sound or noise to be attenuated.

### ***Response to Arguments***

5. Applicant's arguments filed 12/5/2005 have been fully considered but they are not persuasive.

The applicant asserts that because Haile mentions the use of blending glass fibers with nonwoven fabrics, the applied prior art does not read on the current claims. The examiner respectfully disagrees. Haile discloses that other fibers that can be added include glass fibers (column 13, lines 58-64), but Haile does not require the presence of glass fibers.

The applicant asserts that because Haile does not appear to mention the use of glass bicomponent fibers, the applied prior art does not read on the current claims. The examiner respectfully disagrees. The current claims do not require the presence of glass bicomponent fibers. Only member (b) of claim 1 requires the presence of glass bicomponent fibers.

### ***Conclusion***

6. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

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